

## Department of Energy

932.102

for a complainant employee's legal counsel.

(2) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the contracting officer:

(i) May authorize reimbursement of costs on a provisional basis, in appropriate cases;

(ii) Must consult with the Office of General Counsel whistleblower costs point of contact, who will consult with other Headquarters points of contact as appropriate, before making a final allowability determination; and

(iii) Must determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and the relevant facts and circumstances, including federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.

(3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.

(4) If a contracting officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

[65 FR 62301, Oct. 18, 2000]

## PART 932—CONTRACT FINANCING

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AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12011, Mar. 28, 1984, unless otherwise noted.

### 932.006-4 Procedures.

(a) The remedy coordination official shall follow the procedures identified in FAR 32.006-4.

(b) [Reserved]

[63 FR 5273, Feb. 2, 1998]

### Subpart 932.1—General

#### 932.102 Description of contract financing methods. (DOE coverage—paragraph (e))

(e)(2) Progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate

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safeguards provided for the administration of progress payments based on a percentage or stage of completion.

[61 FR 41708, Aug. 9, 1996]

### **Subpart 932.3—Loan Guarantees for Defense Production**

#### **932.304-2 Certificate of eligibility.**

(h) Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Bank only by the Secretary or designee specified for that purpose.

### **Subpart 932.4—Advance Payments for Non-Commercial Items**

#### **932.402 General.**

(e)(1) The Head of the Contracting Activity or designee shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(2) Before authorizing any advance payment arrangements, the approving official shall obtain the advice, and other inputs of the servicing finance office.

#### **932.407 Interest.**

(d)(4) Advance payments may be made without interest under cost-reimbursement contracts for construction or engineering services.

### **Subpart 932.5—Progress Payments Based on Costs**

#### **932.501-2 Unusual progress payments.**

(a)(3) The Head of the Contracting Activity shall forward all requests which are considered favorable, with supporting information, to the Chief Financial Officer, Headquarters, will approve or deny the request.

(d) Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract; provided the bid or proposal is not conditioned on approval of such request.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

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### **Subpart 932.6—Contract Debts**

#### **932.605 Responsibilities and cooperation among Government officials.**

(b) The DOE contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOE finance office making payments under the contract has primary responsibility for debt collection.

### **Subpart 932.8—Assignment of Claims**

#### **932.803 Policies.**

(d) In the case of prime contracts, when it has been determined that the financing of contracts will be facilitated in the interest of DOE programs, it is the policy of DOE that such contracts provide, or be amended without consideration (see Assignment of Claims Act of 1940) to provide, in conformance with FAR 32.804, that payments to be made to an assignee shall not be subject to reduction or setoff. In the case of subcontracts, when loans are made for the purpose of financing performance of subcontracts under DOE prime contracts, financing institutions or the Government as guarantor in those instances in which such loans are guaranteed should not be required to incur risks of loss by reason of possible diversion of assigned subcontracts proceeds for payment of other claims of the prime contractor against the borrower, otherwise unrelated to the assigned subcontracts. The Head of the Contracting Activity shall require the adoption of these policies and practices by DOE prime contractors with respect to DOE subcontract work. The Head of the Contracting Activity should inform the Chief Financial Officer, Headquarters of each DOE contractor who is unwilling to adopt policies consistent with this paragraph and the reasons given in support of the contractor's position.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]